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GARDERE / JHTL
GARDERE WYNNE SEWELL, LLP
1601 ELM STREET
SUITE 3000
DALLAS, TX 75201

EXAMINER	
SADLON, JOSEPH	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/590,917	TREVETHICK, SIMON	
	Examiner	Art Unit	
	JOSEPH J. SADLON	3633	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *30 December 2010*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *41,43-48 and 50-84* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *41,43-48 and 50-84* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *20 January 2010* is/are: a)☐ accepted or b)☒ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *30 December 2010; 31 January 2011*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

This communication is a Second Office Action on the Merits. Claims 41, 43-48, 50-84, as amended 13 Dec. 2010, are pending and have been considered as follows:

Information Disclosure Statement

1. The information disclosure statement (IDS) submitted on 30 Dec. 2010 and 01 Jan. 2011 is/are in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement(s) is/are being considered by the examiner.

However, the examiner has lined through cite nos. A22 and A25 in the U.S. Patent Document section of the IDS filed 30 Dec. 2010 for failing to comply with 37 CFR 1.98(b)(1) because the patent was granted to Smythe Jr. not to Smythe.

Drawings

2. The drawings are objected to as failing to comply with 37 CFR 1.84 because:

- the replacement drawings received on 20 Jan. 2010 reference character "1" has been used to designate two different components. Note, Applicant has admitted on the record (13 Dec. 2010, page 8, line 12) that FIG. 9 shows a different embodiment; this must be disclosed and denoted in the drawings as such; see 37 CFR 1.84 (p).

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate

prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the following must be shown or the feature(s) canceled from the claim(s):

- claim 76, line 2: "internal lining...sandwiched" has/have not been specifically pointed out;
- claim 78, line 2: "batten and cladding subassembly" has/have not been specifically pointed out;

No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate

changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claim(s) 41-42, 44-48, 50-58, 70-72, 74-75, 79-84 is/are rejected under 35 U.S.C. 102(b) as being anticipated by Rinklake et al. (US 6182404 B1)(hereinafter Rinklake).

As per each of these claims Rinklake teaches:

> 41. An elongate batten (10) adapted for positioning intermediate an inner wall framing member (28) and an outer wall cladding sheet (20, 22, 12) having an inner surface (see FIG. 6; note the lower surface of elements 20, 22, 12 is considered "an inner surface") to facilitate dispersion and evaporation of moisture

from a wall cavity (see FIG. 6; note cavity defined below plates 20), said batten comprising:

an outer surface (see FIG. 6; note the upper surface of element 10 is considered "an outer surface") and an inner surface (see FIG. 6; note the lower surface of element 10 is considered "an inner surface"), the outer surface containing grooves having (see FIG. 6; note areas between raised beads 32, 34, 36, 38 on element 10 considered "grooves") a defined depth below the outer surface of the batten to facilitate passage of water through the grooves, wherein a portion of the outer surface of the batten is in contact with the inner surface of the cladding sheet (see FIG. 6; note the upper surface of element 10 is considered "a portion of the outer surface"; see also "plate 12...in contact with" col. 6, ln. 1-6);

at least one longitudinally extending channel to facilitate migration and drainage of moisture between the batten and the framing member along the length of the batten (see FIG. 6; note plurality of channels formed above and below element 10; note also, the Examiner is considering the claim language of "between the batten and the framing member" as meaning "collectively", i.e. sharing of the work of facilitating migration and drainage).

42. A batten according to claim 41, wherein the at least one longitudinal channel is formed in the inner surface of the batten adapted for face-to face engagement with an adjacent outer surface of the underlying framing member (underside of

bead 36, FIG. 6)(note also, it has been held that the recitation that an element is "adapted to" perform a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchison*, 69 USPQ 138).

44. A batten according to claim 41, wherein the at least one longitudinal channel extends through the batten (water channel 30, FIG. 2).

45. A batten according to claim 41, including a plurality of said longitudinal channels disposed in generally parallel side-by-side relationship and extending along substantially the entire length of the batten (see "channels" formed at 30, 36, 32, FIG. 2).

46. A batten according to claim 45, wherein the longitudinal channels are respectively formed between adjacent pairs of a corresponding plurality of longitudinal ridges, said ridges collectively defining the inner surface of the batten (see adjacent pairs of ridges forming channels, above and below element 10, FIG. 6).

47. A batten according to claim 41, wherein the batten includes a generally transverse channel to facilitate migration and drainage of moisture across the

batten (see FIG. 2; note "generally transverse channel" formed between toothed reinforcement ribs; also col. 5, ln. 30-33).

48. A batten according to claim 47, wherein said transverse channel is formed in the inner surface of the batten adapted for face-to-face engagement with the adjacent outer surface of the framing member (see FIG. 2; note also, it has been held that the recitation that an element is "adapted to" perform a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchison*, 69 USPQ 138).

50. A batten according to claim 47, wherein the transverse channel extends through the batten (see FIG. 2; note above identified "generally transverse channel" is recognized as "extends through" as broadly claimed).

51. A batten according to claim 41, including a plurality of said longitudinal channels disposed in generally parallel side-by-side relationship and extending along substantially the entire length of the batten (see FIG. 6; note areas below raised beads 32, 34, 36, 38 on underside of element 10 are considered "longitudinal channels" as broadly claimed), the longitudinal channels being respectively formed between adjacent pairs of a corresponding plurality of longitudinal ridges (see FIG. 6; note upward and downward sloping portions of

beads are considered ridges as broadly claimed), said ridges collectively defining the inner surface of the batten, and a plurality of said transverse channels to facilitate migration and drainage of moisture across the batten, said transverse channels being disposed in generally parallel side-by-side relationship (see FIG. 2; note "generally transverse channels" formed between toothed reinforcement ribs; also col. 5, ln. 30-33).

52. A batten according to claim 51, wherein the transverse channels are defined by a corresponding series of openings formed in the respective longitudinal ridges (see FIG. 2; note above identified "generally transverse channels" are defined by "openings" in beads 38, 36, 32 between each of the toothed reinforcement ribs).

53. A batten according to claim 52, wherein the openings defining the respective transverse channels are transversely aligned (see FIG. 2; note above identified "openings" in beads 32 and 38 are "transversely aligned").

54. A batten according to claim 52, wherein the openings defining the respective transverse channels are transversely staggered (see FIG. 2; note above identified "openings" in beads 36 are "transversely staggered" with above identified "openings" in beads 38 and 32).

55. A batten according to claim 51, wherein the transverse and longitudinal channels form a ventilation and drainage matrix adapted to permit migration of moisture in liquid or vapour form across, along and through the batten (see FIG. 2; this is considered a "drainage matrix" as broadly claimed; note also, it has been held that the recitation that an element is "adapted to" perform a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchison*, 69 USPQ 138).

56. A batten according to claim 55, wherein the longitudinal and transverse channels are disposed in generally orthogonal relationship (see FIG. 2; note above identified channels above and below member 20 are recognized as disposed "generally orthogonal" to above identified "generally transverse channels").

57. A batten according to claim 55, wherein at least some of the transverse and longitudinal channels respectively intersect (see FIG. 2; note "at least some" of above identified "generally transverse channels" intersect the longitudinal channels formed at 40 and 42).

58. A batten according to claim 41, being formed from a plastics material adapted to resist moisture permeation, and adapted to be readily cut to desired lengths

using conventional sawing tools (see "deep-drawn plastic film" col. 5, ln. 1-5; plastic is recognized as "readily cut"; note also, it has been held that the recitation that an element is "adapted to" perform a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchison*, 69 USPQ 138).

70. A batten according to claim 41, wherein the grooves facilitate the downward passage of water along the inner surface of the outer cladding material (water channel 30, FIG. 2).

71. A method of building construction, said method comprising the steps of:

forming a structural frame from framing members (joist element 28, roof batten 56, FIG. 1), such that the framing members define cavities therebetween (see FIG. 6; note cavity formed between 56 and 12, 20, 22, 12);

securing a plurality of battens (10) to outer surfaces of at least some of the framing members (28, FIG. 6), wherein each of said plurality of battens include an outer surface (see FIG. 6; note the upper surface of element 10 is considered "an outer surface") and an inner surface (see FIG. 6; note the lower surface of element 10 is considered "an inner surface"), the outer surface containing grooves having a defined depth below the outer surface of the batten (see FIG. 6; note areas between raised beads 32, 34, 36, 38 on element 10 are considered "grooves") to facilitate passage of water through the grooves and at least one

longitudinally extending channel (see FIG. 6; note plurality of longitudinal channels formed above and below element 10) to facilitate migration and drainage of moisture between the batten and the framing member along the length of the batten (note also, the Examiner is considering the broad claim language of "between the batten and the framing member" as meaning "collectively", i.e. sharing of the work of facilitating migration and drainage),

applying an outer cladding material having an inner surface (20, 22, 12, FIG. 6; these are recognized as "an outer cladding material" as broadly claimed) to substantially cover the framing members and the battens; such that the battens collectively form a clearance space between the framing members and the cladding material, wherein a portion of the outer surface of each batten is in contact with the inner surface of the cladding material (see FIG. 6; note the upper surface of element 10 is considered "a portion of the outer surface"; see also "plate 12...in contact with" col. 6, ln. 1-6);

the battens thereby facilitating drainage and ventilation of the cavities (see "water channel 30", FIG. 2).

72. A method according to claim 71, wherein the structural frame is formed substantially from a material selected from the group comprising timber, metal (see "FIG. 9 shows a joist element 10 stamped out of stainless steel" col. 14, ln. 53-54), FRC and plastics, and wherein the method is employed to construct a wall section of a building (see "on a roof", title; note a roof is considered a wall).

74. A method according to claim 71, wherein the battens are secured so as collectively to cover more than approximately 50% of the combined outer surface area of the framing members to which the method is applied (see FIG. 1; note it is recognized that "more than approximately 50% of the combined outer surface area" of 28 and 56 is shown in this figure as "effectively covered" as broadly claimed).

75. A method according to claim 71, wherein the battens are secured to the framing members by a fasting technique selected from the group comprising nailing, screwing, tacking, stapling, gluing, welding, chemical bonding, frictional engagement, and mechanical engagement (see "within the recessed underside" col. 6, ln. 9-15; this is recognized as "mechanical engagement" as broadly claimed).

79. A method according to claim 71, including the step of forming the at least one longitudinal channel or a generally transverse channel in the batten by a process selected from the group comprising: extruding; machining; milling; routing; casting; moulding; and fabricating; or a combination of those processes (see "deep-drawn plastic film" col. 5, ln. 1-5; this is recognized as "fabricating" as broadly claimed)

80. A building or building section constructed by the method comprising:

forming a structural frame from framing members, such that the framing members define cavities therebetween (see cavities between joist element 28, roof batten 56, FIG. 1);

securing a plurality of battens (10) to outer surfaces of at least some of the framing members, wherein each of said plurality of battens include an outer surface and an inner surface (see FIG. 6; note the upper surface of element 10 is considered "an outer surface") and an inner surface (see FIG. 6; note the lower surface of element 10 is considered "an inner surface"), the outer surface containing grooves having a defined depth below the outer surface of the batten (see FIG. 6; note areas between raised beads 32, 34, 36, 38 on element 10 are considered "grooves") to facilitate passage of water through the grooves and at least one longitudinally extending channel (see FIG. 6; note plurality of longitudinal channels formed above and below element 10) to facilitate migration and drainage of moisture between the batten and the framing member along the length of the batten (see FIG. 6; note plurality of channels formed above and below element 10; note also, the Examiner is considering the claim language of "between the batten and the framing member" as meaning "collectively", i.e. sharing of the work of facilitating migration and drainage),

applying an outer cladding material (20, 22, 12) having an inner surface to substantially cover the framing members and the battens; such that the battens

collectively form a clearance space between the framing members and the cladding material (see FIG. 6; note "clearance space" provided above elements 28 and 56), wherein a portion of the outer surface of each batten is in contact with the inner surface of the cladding material (see FIG. 6; note the upper surface of element 10 is considered "a portion of the outer surface"; see also "plate 12…in contact with" col. 6, ln. 1-6).

81. An elongate batten (10) adapted for positioning intermediate an inner wall framing member (28) and an outer wall cladding sheet (12, 20, 22) having an inner surface to facilitate dispersion and evaporation of moisture from a wall cavity, said batten comprising:

an outer surface (see FIG. 6; note the upper surface of element 10 is considered "an outer surface") and an inner surface (see FIG. 6; note the lower surface of element 10 is considered "an inner surface"), the inner surface containing grooves (see FIG. 6; note areas between raised beads 32, 34, 36, 38 below element 10 considered "grooves") having a defined depth below the outer surface of the batten to facilitate passage of water through the grooves, wherein a portion of the inner surface of the batten is in contact with the framing member (see "within the recessed underside of the raised bead" col. 6, ln. 1-6);

at least one longitudinally extending channel to facilitate migration and drainage of moisture between the batten and the framing member along the length of the batten (see FIG. 6; note plurality of channels formed above and

below element 10; note also, the Examiner is considering the claim language of "between the batten and the framing member" as meaning "collectively", i.e. sharing of the work of facilitating migration and drainage; also "along the length of the batten" only requires the ability to facilitate migration and drainage of moisture at any point "along the length", which function element 10 clearly performs).

82. A batten according to claim 81, wherein the at least one longitudinal channel is formed in the outer surface of the batten adapted for face-to-face engagement with an adjacent inner surface of the overlying cladding sheet (see FIG. 6; note areas above and below raised beads 32, 34, 36, 38 are considered "longitudinal channels" as broadly claimed; note also, it has been held that the recitation that an element is "adapted to" perform a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchison*, 69 USPQ 138).

83. A batten according to claim 81, wherein the batten includes a generally transverse channel to facilitate migration and drainage of moisture across the batten (see FIG. 2; note "generally transverse channels" formed between toothed reinforcement ribs; also col. 5, ln. 30-33; note these are recognized to "facilitate migration and drainage" due to the space provided).

84. A batten according to claim 83, wherein the transverse channel is formed in the outer surface of the batten adapted for face-to-face engagement with an adjacent inner surface of the overlying cladding sheet (see FIG. 6; note also, it has been held that the recitation that an element is "adapted to" perform a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchison*, 69 USPQ 138).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

7. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

8. Claim(s) 59 rejected under 35 U.S.C. 103(a) as being unpatentable over Rinklake in view of Cancio et al. (US 4465729 A).

As per claim 59, Rinklake teaches the limitations according to claim 41 but fails to explicitly disclose:

- pre-formed lines of weakness disposed at predetermined intervals, to permit the batten to be manually divided into small sections of desired length, without the need for cutting or sawing.

Cancio et al. teaches a building sheet with grooves which enables an installer to accurately size the element before tearing by hand, specifically:

- pre-formed lines of weakness (16, 18, FIG. 1) disposed at predetermined intervals, to permit the batten to be manually divided into small sections of desired length, without the need for cutting or sawing.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the element of Rinklake by including the tear lines as taught by Cancio et al. in order to allow more expedient installation.

9. Claim(s) 60-69, 73 is/are rejected under 35 U.S.C. 103(a) as being unpatentable over Rinklake alone.

As per claims 60-61, Rinklake teaches the limitations according to claim 41, but fails to explicitly disclose:

- formed substantially from PVC;
- being formed substantially from FRC.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the element 10 of PVC or FRC, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

As per claims 62-69, Rinklake teaches the limitations according to claim 41, and that the transverse channels are defined by a series of cutouts in the ridges (see FIG. 2; note "generally transverse channels" are defined by "cutouts" in beads 38, 36, 32 between each of the toothed reinforcement ribs because the shape of the recessed area extends into the rib as at beads 36, 38, 32), including three longitudinal channels (see FIG. 6; note plurality of channels formed above and below element 10), and wherein corresponding cutouts on adjacent ridges are staggered (see FIG. 2; note above identified "cutouts" in beads 36 are "transversely staggered" with above identified "cutouts" in beads 38 and 32 because of the shape of the recessed areas extending into each of beads 38, 36, 32) but fails to explicitly disclose:

- being between 30 and around 60 mm in width;
- being approximately 45 mm in width;
- being between 10 mm and around 30 mm in thickness;
- being approximately 19 mm in thickness;
- each being approximately 9.5 mm in width and approximately 17 mm in height, defined by respective intermediate ridges being approximately 2.5 mm in thickness;
- each cutout being generally V-shaped with a length of around 20 mm and a height of around 8 mm, the cutouts being spaced apart along the respective ridges with approximately 50 mm between centers;

- having any preformed length of around 2400 mm, and being adapted for division into smaller predetermined lengths on-site

In *Gardner v. TEC Systems, Inc.*, 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), *cert. denied*, 469 U.S. 830, 225 USPQ 232 (1984), the Federal Circuit held that, where the only difference between the prior art and the claims was a recitation of relative dimensions of the claimed device and a device having the claimed relative dimensions would not perform differently than the prior art device, the claimed device was not patentably distinct from the prior art device. See also, *Hobbs v. Wisconsin Power and Light Company et al.*, 115 USPQ 371 (CA 1957), in which the court stated that "[g]enerally, it is not invention to change size or degree of thing or of any feature or function of machine or manufacture; there is no invention where change does not involve different concept, purposes, or objects, but amounts to doing same thing substantially the same way with better results." See also, *The Ward Machinery Company v. Wm. C. Staley Machinery Corporation*, in which the court stated that "[i]mprovement resulting from change in size, proportion, or degree of element contained in prior art, no matter how desirable or useful, does not constitute patentable invention."

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the element of Rinklake by making the various dimensions be equal to any dimension, including those claimed, to suit any individual need depending on the requirements of the installation site, and because changes in size/proportion do not constitute a patentable difference (note also, with regards to claim

69 and the limitation of "adapted for division", it has been held that the recitation that an element is "adapted to" perform a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchison*, 69 USPQ 138. In the instant case, plastic of Rinklake is recognized as easily "adapted for division").

73. Rinklake teaches the limitations according to claim 71, but fails to explicitly disclose:

- the cladding material is FRC sheet.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the assembly of Rinklake by substituting FRC for the flat roof plate 12 since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

10. Claim(s) 76, 77 is/are rejected under 35 U.S.C. 103(a) as being unpatentable over Rinklake in view of Conville (US 4995605 A).

As per these claims:

76. Rinklake teaches the limitations according to claim 71, but fails to explicitly disclose:

- the further step of applying an internal lining material such that the framing members are effectively sandwiched, directly or indirectly, between the external cladding material and the internal lining material.

Conville teaches the installation of panel elements to the underside of a roof structure, specifically:

- the further step of applying an internal lining material (22, 23, FIG. 1) such that the framing members (37) are effectively sandwiched, directly or indirectly, between the external cladding material and the internal lining material.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the assembly of Rinklake by including the step of applying the panels beneath the joists as taught by Conville in order to form a ceiling as is well known in the art of home construction.

77. Rinklake as modified by Conville teaches the limitations according to claim 76, but fails to explicitly disclose

- the internal lining material is plasterboard.

Conville teaches the internal lining material is gypsum boards, and it would have been obvious to one of ordinary skill in the art at the time the invention was made to use plasterboard as an obvious modification of a known material since it has been held to be within the general skill of a worker in the art to select a known material on the basis

of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

11. Claim(s) 78 is/are rejected under 35 U.S.C. 103(a) as being unpatentable over Rinklake in view of Cox (US 7096629 B1).

As per these claims:

78. Rinklake teaches the limitations according to claim 71 but fails to explicitly disclose the steps of:

- preattaching the battens to the cladding sheets to form a batten and cladding subassembly, and subsequently securing the sub-assembly to the frame.

Cox teaches an exterior wall cladding system (title) specifically designed for thin reinforced panels (via Abstract, ln. 1-2), which are structurally supported in such a manner to sufficiently resist various bending forces (col. 6, ln. 35-48), wherein:

- preattaching the battens (100) to the cladding sheets (101) to form a batten and cladding subassembly, and subsequently securing the sub-assembly to the frame (see "attached" col. 8 ln. 30-33; note interlocking connection taught by Cox is considered analogous to nailing as means for securing) the sub-assembly to the frame.

From this teaching of Cox, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the method taught by Rinklake by pre-attaching the battens to the cladding sheets using the method of Cox to form a batten and cladding sub-assembly, and subsequently securing the sub-assembly to the

frame, for the purpose of providing strength and stiffness, as well as allowing pre-assembly in a shop thereby lowering the cost of production.

Response to Arguments

12. Applicant's arguments with respect to claim(s) 41, 43-48, 50-80 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to JOSEPH J. SADLON whose telephone number is (571)270-5730. The examiner can normally be reached on M-F 7:30A-5:00P/Alt. Fri. Off. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Glessner can be reached on (571)272-6754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Brian E. Glessner/
Supervisory Patent Examiner, Art Unit 3633

/J. J. S./
Examiner, Art Unit 3633

/JS/